REMARKS

Claims 1-26 now stand in the application, new claims 21-26 added. Reconsideration of the application and allowance of all claims are respectfully requested in view of the above amendments and the following remarks.

Claims 8, 10, 11, 14, 16, 17 and 20 are rejected under 35 USC 101. This rejection is respectfully traversed.

Applicant agrees that software per se is not statutory subject matter, but that is not all that is recited in these claims. Claim 8 recites that the program code is able to be executed by a control means of a computer, and code per se cannot be executed by a computer. Code cannot be executed by a computer unless it resides somewhere that the computer can read it. To clarify this, claim 8 has been amended to recite that that code is on a computer readable medium (e.g., on a disk or in memory). In this regard, the attention of the examiner is directed to MPEP 2106.01, which in relevant part states:

> When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)(discussing patentable weight of data structure limitations in the context of a statutory claim to a data structure stored on a computer readable medium that increases computer efficiency)

Claim 8 further recites receiving means for receiving of a first service container, and execution means for executing a service machine contained in the service container. While the examiner is correct that the service machine may be software, the service machine is consistently described throughout the application (e.g., in the Abstract) as being executed by the service

computer, and the service computer is clearly hardware, e.g., as discussed in detail at paragraph [0018] of publication 2002/0003868. The execution means recited in claim 8 includes at least the processor(s) CPUSC as described in paragraph [0018] and illustrated in Fig. 1.

Claim 10 has similarly been amended to recite that the service server module is on a computer readable medium, which is already inherent in its being able to be executed by control means of the service server.

Claim 11 has been amended to recite that the service container is resident on a computer readable medium, which is already inherent in its program code being able to be executed by a control means of a service computer.

The prior art rejections are again respectfully traversed.

In paragraph 4 at pages 2-3 of the Office action, the examiner discusses the issue of whether or not a software module can properly be considered a machine. Applicant disagrees with the conclusion of the examiner, but the important point is that the examiner has only addressed one of the distinguishing arguments presented in the previous response.

The examiner considers the terminal domain 101 in Fig. 1 of Yates to correspond to the claimed service computer connected to a user by way of a communications network. There must then be a service server that provides to the terminal domain 101 a service machine. This is lacking in Yates. The terminal domain of Yates may be provided with a set of software elements from which it can select to build its software agent (service machine), but it does not receive the software agent from somewhere else encapsulated in a container.

The examiner relies on Beck to teach the transmission of a service machine contained within a service container. According to Beck, a service is made up of an interface 402, implementation 403 and adaptor 404 as shown in Fig. 4. As described at lines 3-24 of column 6

and illustrated in Fig. 5, when a client device requests usage of a service but the service is not already loaded onto the device, the three components of the service are downloaded to the device.

While Beck arguably teaches downloading a service "machine" to a device, it does not teach that the machine is transmitted to the device in a service container. Indeed, the device separately downloads each of the three components of the service.

If one of skill in the art were to consider the teachings of the two references, he would see Yates teaching that a terminal domain could retrieve software modules from another domain in order to construct a desired software agent, and he would see Beck teaching that a mobile telephone device can download software needed to perform a service at that device. One logical combination of the teachings of the two reference might be to use both features, i.e., downloading software to the mobile phone when needed and downloading software to the terminal domain when needed. But this would not get Yates any closer to the claimed invention.

Another view by the ordinary artisan may be that Beck teaches downloading software to a device when needed and Yates teaches downloading software to a domain when needed, and Beck does not use SIBB's so does not have the degree of configuration flexibility of Yates. But in either case, the software is downloaded to the device or domain in multiple parts. There is no suggestion in either reference of the transmission of a container containing the software agent or service.

In the present Office action, the examiner argues that the SIBB's provide services and are therefore "machines." The examiner cannot reconcile this position with the simple name of the SIBB which requires that it be service independent. It is an impossibility for an SIBB to provide a service and also be service independent. The examiner seeks to finesse this problem by

arguing that Yates teaches providing multiple services, but this simply does not address the problem that any given SIBB *must* be service independent and therefore cannot provide a service as would be required of the present claims.

Further, while applicant maintains that the SIBB's are not machines as used in the context of the present claims, the rejection is flawed even without this distinction. Claim 1 requires that the service machine be transmitted to a service computer and then executed by the service computer to then manage the execution of a personal service. But claim 1 further requires that the service computer provide a network lock which offers a predefined interface to the communication network for the provision of the personal service by the service machine to the communication means via the communication network. The examiner has identified the terminal domain of Yates as the claimed service computer, but the terminal domain does not provide a network lock which offers a predefined interface as claimed.

As to claim 2, it is noted that the claimed monitor lock is described as being provided by the service computer, and the examiner has alleged support for this in Yates, but the examiner has not explained how the first service container (which is allegedly an SIBB in Yates) uses the monitor lock to advise the service server of a condition of the service computer. Transmitting notifications between objects is not enough. The claim requires that the notification be provided by the first container, which the examiner has equated with a SIBB. The examiner has not explained how the SIBB ("service container") which encapsulates an SIBB (service machine") also notifies that service server of a condition of the service computer (the terminal domain in Yates).

A similar issue arises with respect to claim 3, where it is recited that the service container sends an alarm to either a terminal or a management system, and that the service container doing

this is the same service container which encapsulates the service machine. This is not the case in Yates, where there is no suggestion that any SIBB might be used to send an alarm to either a terminal or management system.

For the reasons discussed above, it is submitted that all claims comply with the requirements of 35 USC 101, and further that the claims patentably distinguish over the cited art.

And contrary to the assertion of the examiner, applicant is not rehashing an issue already decided by the Board of Appeals, nor requesting that the examiner contravene the earlier decision of the Board. As pointed out above, it can be conceded for purposes of this discussion that Beck teaches the downloading of a "machine" to a device, as the examiner has asserted and as the Board (erroneously) has affirmed. What both the examiner and the Board have not considered is that the SIBB is by definition service independent, and therefore cannot possibly be considered to provide a service as is required of the machine recited in the present claims. Further, there are clear distinctions with respect to claims 2, 3 and 18-20 which have not been discussed either by the examiner or the Board.

Particularly, neither the examiner nor the Board have suggested where there is support for service computer conditions and alarms being sent by the "first container" which is earlier recited in claim 1 as encapsulating the service machine. The examiner has simply generally alleged support in various transmissions in Yates, but ignores the fact that claims 2, 3 and 18-20 are quite specific as to how these things are to be sent.

New claims 21-26 have been added to specify the types of services provided by execution of the service components contained in the claimed containers. These claims further differentiate from the applied prior art. The subject matter of these claims is supported in various places

throughout the specification, e.g., in the paragraph bridging pages 10-11, the paragraph bridging

pages 12-13, and at the top of page 16.

As a point of relevant information, attached hereto is a copy of the claims as allowed by

the EPO in the companion European application.

In view of the above, reconsideration and allowance of this application are now believed

to be in order, and such actions are hereby solicited. If any points remain in issue which the

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is

kindly requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

_____/DJCushing/_____

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